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Pulte Home Corporation Order on Plaintiff's Motion for More Definite Statement as to Defendant's Sixth and Ninth Defenses and Motion to Strike Defendant's Third Defense

John J. Goger

Fulton County Superior Court Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

PULTE HOME CORPORATION,)	
)	
Plaintiff,)	
)	Civil Action File No.
v.)	2015CV267588
)	
CHOATE CONSTRUCTION COMPANY,)	
)	
Defendant.)	
)	

**Order on Plaintiff's Motion for More Definite Statement as to Defendant's Sixth and Ninth
Defenses, and Motion to Strike Defendant's Third Defense**

Before this Court is Plaintiff's Motion for More Definite Statement as to Defendant's Sixth and Ninth Defenses, and Motion to Strike Defendant's Third Defense. After the filing of this Motion, Defendant Choate Construction Company ("Choate") filed its First Amended Answer and Counterclaim. Plaintiff Pulte Home Corporation ("Pulte") acknowledges that the amendments moot Pulte's Motion to Strike Defendant's Third Defense. However, Pulte still requests a more definite statement as to two of Choate's defenses to Pulte's breach of warranty claim: Choate's Sixth Defense which alleges constructive fraud and Choate's Ninth Defense which alleges mutual mistake of fact.

Pulte is suing Choate, its prior general contractor, for breach of warranty arising out of Choate's construction of a pool and retaining wall (the "Project"). Choate's Sixth Defense alleges that Pulte issued a false and misleading soils report to Choate which induced Choate to issue the warranties at issue in the case. Pulte was responsible for the initial grading and fill work before Choate conducted its work on the Project, and Choate sought to exclude any responsibility for any settlement due to placement of fill. Choate contends that Pulte knew or should have known that the soils were not suitable for the Project. The Ninth Defense alleges

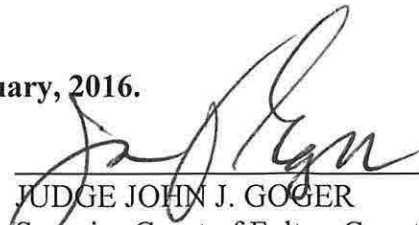
that even if Pulte denied knowledge of unsuitable soils, the warranty fails for mutual mistake of fact as to the suitability of the soil for construction of the Project.

Pulte takes issue with the specificity of the Sixth Defense because it does not specify what statements were fraudulent in what soils report issued to whom and when. Likewise, Pulte argues that the Ninth Defense does not specify what statements were fraudulent in what soils report, what soils were unsuitable, or how the report led to both parties being mistaken as to the soil suitability.

In Georgia, “no technical forms of pleading or motions are required.” O.C.G.A. § 9-11-8(e)(1). However, “[i]n all averments of fraud or mistake, the circumstance constituting fraud or mistake shall be stated with particularity.” O.C.G.A. § 9-11-9. “[A]llegations of fraud should ‘At the very least . . . designate the occasions on which affirmative misstatements were made and by whom and in what way they were acted upon.’” *Hayes v. Hallmark Apartments, Inc.*, 232 Ga. 307, 309 (1974) (quoting *Diversified Holding Corporation v. Clayton McLendon, Inc.*, 120 Ga. App. 455, 456 (1969)). The Court finds that the Sixth and Ninth Defenses are sufficiently pled to give Pulte notice that the alleged fraudulent statements were made by Pulte or its contractors regarding the soil suitability in soil reports issued before the construction project was undertaken by Choate, thus fulfilling the ultimate goal of pleading with particularity—to allow a party to properly defend itself.

As such, the Motion is **DENIED**.

SO ORDERED this 23 day of February, 2016.



JUDGE JOHN J. GOGER
Superior Court of Fulton County
Atlanta Judicial Circuit

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